



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

STANDARD OIL CO. v. COMMONWEALTH.

Dec. 14, 1905.

[52 S. E. 390.]

1. Corporations — Foreign Corporations — Imposition of Fee for Transacting Business in State — Statutes — Construction.— Revenue Law, § 37 (Va. Code 1904, p. 2214), imposing on a foreign corporation authorized to exercise the powers of a transportation company a prescribed fee, on its obtaining a certificate of authority to do business in the state, requires a foreign corporation authorized to exercise the powers of a public service corporation to pay the fee in order to carry on any business in the state, though it does not intend to carry on the business of a public service corporation, and though it cannot carry on such business under Const. art. 12, § 163 (Va. Code 1904, p. cclx), prohibiting foreign corporations from exercising the powers of a public service corporation; the test of a foreign corporation's liability for the fee imposed being whether its charter authorizes it to carry on that business.

2. Same.—A foreign corporation, included in the class designated by Revenue Law, § 37 (Va. Code 1904, p. 2214), imposing a fee on foreign corporations authorized to exercise the powers of a transportation company before obtaining authority to do business in the state, does not belong to the class of corporations named in section 38, imposing a prescribed fee on foreign corporations in order to obtain authority to do business in the state; for it by its express terms excludes corporations included in section 37.

3. Same.—The rule that, in case of doubt as to the validity of a tax, the doubt must be resolved in favor of the citizen, has no application to the construction of a statute imposing a fee on a foreign corporation as a condition precedent to its obtaining the right to transact business in the state.

Keith, P., and Cardwell, J., dissenting.

Error to State Corporation Commission.

Action by the commonwealth against the Standard Oil Company. Judgment imposing a fine on defendant, and it brings error. Affirmed.

Christian & Christian, for plaintiff in error.

Wm. A. Anderson, Atty. Gen., for the Commonwealth.

HARRISON, J. This is an appeal from a judgment of the State Corporation Commission, imposing a fine of \$10 and costs, under section 1105 of the Code of 1904, as amended by the act of May

15, 1903 (Acts 1902-04, p. 360, c. 242), upon the Standard Oil Company for the alleged offense of transacting business within the state of Virginia without having first obtained from the Corporation Commission the certificate of authority required by law.

It appears from the record that the Standard Oil Company is a foreign corporation, created and organized under the laws of New Jersey, with an authorized capital stock of \$110,000,000. It further appears that the appellant company is authorized by its charter to exercise some of the franchises and powers of a public service corporation.

The solution of the present controversy involves a construction of section 37 of the revenue law of Virginia (Va. Code 1904, p. 2214), which provides as follows: "Every domestic corporation authorized by its charter to exercise the powers of a transportation or transmission company, or to own, lease, construct, maintain and operate a public service line or road of any kind, upon the granting or extension of its charter, and every foreign corporation authorized by its charter to exercise the powers of a transportation or transmission company, or to own, lease, construct, maintain and operate a public service line or road of any kind, when it obtains from the State Corporation Commission a certificate of authority to do business in this state, shall pay a fee into the treasury of the state of Virginia to be ascertained and fixed as follows." Then follows a table of the fees to be paid, graded according to the maximum capital stock authorized by the terms of the charter.

According to this table, the fee for the appellant company, having a maximum authorized capital of \$110,000,000, is fixed at \$5,000.

It will not be denied that a state has unlimited power in the matter of prescribing the terms and conditions upon which a foreign corporation shall be permitted to do business within her limits, and that if she chooses such corporations can be excluded entirely. *Bank of Augusta v. Earle*, 13 Pet. 519, 10 L. Ed. 274; *Lafayette Insurance Co. v. French*, 18 How. 404, 15 L. Ed. 451; *Paul v. Virginia*, 8 Wall. 168, 19 L. Ed. 357; *Ducat v. Chicago*, 10 Wall. 410, 19 L. Ed. 972. Therefore the sole question to be determined in this case is, what are the terms and conditions

upon which the appellant corporation is permitted to do business in this state?

These are prescribed by section 37 of the revenue law as follows: "Every foreign corporation authorized by its charter to exercise the powers of a transportation or transmission company, etc., when it obtains from the State Corporation Commission a certificate of authority to do business in this state, shall pay a fee into the treasury of the state of Virginia to be ascertained and fixed as follows."

It is clear from this language that a foreign corporation which is authorized by its charter to do the business of a public service corporation must, in order to carry on business of any kind in this state, obtain from the State Corporation Commission a certificate of authority to do such business, and pay into the state treasury the fee prescribed for such certificate; the test of its liability for such fee being, not whether it can or intends to carry on the business of a public service corporation, but whether its charter authorizes it to carry on that business. No matter which of the numerous businesses authorized by its charter it may be carrying on or proposing to conduct in Virginia, if it is authorized by its charter to carry on the business of a public service corporation, her condition is that the fee prescribed by the section mentioned shall be paid into her treasury.

It is insisted on behalf of the appellant company that the language of section 37 of the revenue law, "to do business in this state," has reference only to doing the business of a public service corporation; that, if appellant was asking for authority to carry on the business of a public service corporation, it would be liable for the fee imposed by section 37, because it is "the business in this state" which is contemplated to be done, or possible for the corporation to do, for which the "certificate of authority" is issued and the fee "ascertained and fixed"; that inasmuch as appellant cannot carry on the business of a public service corporation in Virginia, by reason of the inhibition of section 163, art. 12, of her Constitution (Va. Code 1904, p. cclx), therefore it follows that the Corporation Commission could not have granted it authority to exercise any such powers; that it never could have been the intention of the Legislature of the state to tax the petitioner on a business which it did not ask the privilege of doing

and which the Legislature could not empower it to carry on in the state.

The object of this revenue law was not, in our opinion, to confer upon foreign corporations authority to exercise any particular power granted by their respective charters. The language of section 37 was employed as a means of designating and classifying certain foreign corporations, and fixing the rate of fee that should be paid by such corporations for the certificate of authority to carry on any business in Virginia. The intent of the statute is that corporations, whether created under the laws of Virginia, or coming into the state as foreign corporations, having under their charters extensive powers in connection with the operation of transportation and transmission companies, shall pay a larger fee than ordinary industrial companies. The Legislature might well have enacted that a foreign corporation having powers of this character in its charter should be required to pay more than one not having such powers, although these powers could be exercised in some other state or states, but not in Virginia.

Giving the language of section 37 its literal and natural interpretation, it seems plain that the fee prescribed had no relation or reference to the character or the amount of business to be transacted by the foreign corporation in this state, but was ascertained and determined, first, by the character of the chartered powers of the corporation in the state of its domicile, and, second, by the maximum amount of its authorized capital. The fact that a foreign company possessed, among others, the great powers of a public service corporation, was doubtless regarded by the Legislature as sufficient evidence of its capacity and importance as a business enterprise, no matter what business it might conduct, to justify its being placed in a higher class than its less pretentious neighbors.

Whether the criterion adopted be arbitrary or not, it is a method of determining the fee to be paid which the General Assembly chose to adopt and had the right to prescribe.

Nor did the business to be carried on by the foreign corporation in this state have any bearing upon the question whether a particular corporation was embraced within the class of corporations mentioned in section 37. That question was to be deter-

mined solely by the inquiry whether such corporation had, by virtue of its charter, the powers of a public service corporation. If it had those powers, then it belonged to the class and came within the terms of section 37 and must pay the fee there prescribed.

It is further contended that appellant belongs to the class of corporations named in section 38 of the revenue law, and therefore is only liable to pay a fee of \$600, as prescribed by that section.

It is only necessary to say that, appellant being, as we have held, included in the class designated by section 37, it is, by the express terms of section 38, excluded from that class of corporations there referred to; the language of section 38 being that every foreign corporation other than such as are described in the last preceding section, (37) shall pay, etc.

It is suggested that, in case of doubt as to the validity of a tax, the doubt should be solved in favor of the citizen. We recognize the soundness of this principle when applied to the state and her citizens; but it has, we think, no application to this case, where the party complaining is not a citizen of Virginia, but a foreign corporation, merely asking for the privilege of doing business in this state. We have, however, no doubt of the correctness of the construction placed upon section 37 by the State Corporation Commission. If we entertained doubt merely, our hesitation would have to be solved in favor of the state, as the Constitution requires us to regard the action of the Corporation Commission as *prima facie* correct. Const. art. 12, § 156 cl. "f" (Va. Code 1904, p. cclv).

For these reasons, the judgment complained of must be affirmed.

KEITH, P. (dissenting). I am unable to agree with the view expressed by the court, and deem the question involved of sufficient interest to justify me in filing a dissenting opinion.

As the two cases (Standard Oil Co. v. Commonwealth and American Can Co. v. Same) are identical, I shall refer only to the Standard Oil Company.

This is a corporation chartered under the laws of the state of New Jersey, which has very varied and extensive privileges.

It appears that by its charter it is authorized to exercise the powers of what is known in the laws of this state as a public service corporation. It, further appears, however, that it has not, either in this state or elsewhere, exercised such powers; and the question for consideration is whether it is taxable as a public service corporation, or whether it is taxable under another section of the statute and liable to the payment of a less fee for the exercise of such business as it is actually engaged in within the limits of the state of Virginia.

Section 37 of the revenue law of the state (Va. Code 1904, p. 2214) is as follows: "Every domestic corporation authorized by its charter to exercise the powers of a transportation or transmission company, or to own, lease, construct, maintain and operate a public service line or road of any kind, upon the granting or extension of its charter, and every foreign corporation authorized by its charter to exercise the powers of a transportation or transmission company, or to own, lease, construct, maintain and operate a public service line or road of any kind, when it obtains from the State Corporation Commission a certificate of authority to do business in this state, shall pay a fee into the treasury of the state of Virginia, to be ascertained and fixed as follows." Then follows a table fixing the fee in each case according to the maximum capital authorized, and according to which table the fee to be paid by the Standard Oil Company would be \$5,000.

By section 38 of the revenue law it is provided that "every domestic corporation, other than such as are described in the last preceding section, upon the granting or extension of its charter, and every foreign corporation, other than such as are described in the last preceding section, when it obtains from the State Corporation Commission a certificate of authority to do business in this state, shall pay a fee into the treasury of the state of Virginia, to be ascertained and fixed as follows." Then follows a table fixing these fees, which would make the tax on the Standard Oil Company \$600, which amount has already been paid into the treasury of the state.

By section 163, art. 12, of the Constitution of the state (Va. Code 1904, p. cclx), it is provided that "no foreign corporation shall be authorized to carry on in this state the business, or to

exercise any of the powers or franchises of a public service corporation, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the Constitution and laws of this state where the same can be made applicable to such foreign corporation without discriminating against it. But this section shall not affect any public service corporation whose line or route extends across the boundary of this commonwealth, nor prevent any foreign corporation from continuing any such lawful business as it may be engaged in in this state when this Constitution goes into effect. But any such foreign public service corporation so engaged shall not, without first becoming incorporated under the laws of this state, be authorized to acquire, lease, use or operate within this state any public or municipal franchise or franchises in addition to such as it may own, lease, use or operate when this Constitution goes into effect."

The contention on the part of the commonwealth is that the Standard Oil Company is within the letter of section 37, which imposes a fee upon every foreign corporation authorized by its charter to exercise the powers of a transportation or transmission company; that these words are descriptive of a class upon which the higher rate of fee, or taxation (by whichever term it may be called), is to be imposed; that inasmuch as the Standard Oil Company is, by its charter, authorized to exercise the powers of a transportation or transmission company, it is taxable as such, though it is conceded that it has never exercised, and that by section 163 of the Constitution, which has been quoted, it is prohibited from exercising, any such powers.

To me it seems plain that to adopt this construction is, with all respect to the majority of the court, to "stick in the bark" that the section is to be read as a whole, and not in disjointed parts; and that the language relied upon to justify the imposition of the fee which has been demanded is qualified by that which follows, to wit, "when it obtains from the State Corporation Commission a certificate of authority to do business in this state, shall pay a fee into the treasury of the state of Virginia, to be ascertained and fixed as follows."

It is inconceivable to me that the state of Virginia is to be put in the attitude of exacting a fee for "a certificate of authority to do business in this state," when by the terms of its own organic law it has solemnly declared that "no foreign corporation shall be authorized to carry on in this state the business, or to exercise any of the powers of franchises of a public service corporation," unless it comes within the exceptions to section 163 of the Constitution, which it is not pretended is the case here.

But it is said that, unless the effect attributed by the opinion of the court to this section be the true one, the language of the act, which imposes a tax upon every foreign corporation authorized by its charter to exercise the powers of a transportation or transmission company, would be inoperative; but that I apprehend not to be the case. There are foreign corporations, authorized to carry on the business of public service corporations in this state, which are liable to the payment of the fees prescribed by section 37, because they come within that clause of section 163 of the Constitution which provides that "this section shall not affect any public service corporation whose line or route extends across the boundary of this commonwealth, nor prevent any foreign corporation from continuing any such lawful business as it may be engaged in in this state when this Constitution goes into effect." To illustrate, the Baltimore & Ohio Railroad Company and the Louisville & Nashville Railroad Company could with propriety be assessed under section 37 of the law.

The Standard Oil Company, not having been engaged, either before or since the adoption of the Constitution, in the business of a public service corporation within this state, will not be allowed, under section 163 of the Constitution, to do such business, unless it goes before the State Corporation Commission and becomes incorporated under the laws of this state; and such a charter having been granted constitutes it a domestic corporation, and it would, of course, be entitled to exercise all the powers and functions conferred by its charter, including those of a public service corporation, and would then be within the terms of section 37, and be properly charged with the fees which it prescribes.

It is not contemplated by the law that this extraordinary fee

under section 37 shall be levied but once. Having been once levied and paid, the law with respect to the corporation so paying it is satisfied. But if, under the view of the law presented by the the majority opinion, the Standard Oil Company be required to pay a fee under section 37 in order to obtain a certificate of authority to do business in this state, it will be prohibited by the Constitution from doing the very business upon the basis of which the fee is charged, and, if it should then come forward and ask to have issued to it a domestic charter, would come squarely within the terms of section 37, and be required to pay the fee a second time.

It is axiomatic that before an imposition by the government can be enforced upon the citizen, the will of the sovereign which imposes the burden must be clearly and exactly declared. It has been said that in such a case to doubt is to deny the authority, and it does seem to me that, if the construction of the majority of the court is what was intended by the Legislature, it should have been clothed in less ambiguous terms.

CARDWELL, J., concurs.

Note.—The case of *Commonwealth v. American Can Company*, as decided by the State Corporation Commission, and involving exactly the same point as the principal case, was reported in our November number, 11 Va. Law Reg. 565. The principal case and the case of *Cremeans v. Commonwealth*, 52 S. E. 362, also reported in this number, are remarkable for the strong dissenting opinions filed in each case.

There has recently been much discussion as to the value of dissenting opinions, and as to the propriety of their publication. Some of the arguments against them are: their powerlessness to affect the decision of the case, their detraction from the prestige of the impersonal court, and their effect in keeping the law unsettled. While it is admitted that a dissenting opinion cannot affect a decision of the case, the publication is not for that purpose, but for the assistance of future judges.

In the minds of weak-minded lawyers and ignorant laymen, a powerful dissenting opinion may detract from the dignity of the court; but in the minds of all right thinking men, a court that never has a dissenting opinion is more liable to a suspicion of inefficiency than the dissenting opinion is likely to lower the dignity or effect the prestige of the court.

The third objection to dissenting opinions—(i. e. their effect in keeping the law unsettled) is the subject of an article by William A. Bowen, 17 Green Bag 690. If law were an exact science and capable of the accuracy of mathematical reasoning, then there would be no room for dissenting opinions or for even difference of opinion; but the mind of man has not yet evolved for human society a set of fixed and un-

changeable rules to govern the multiplicity of cases which arise. If there is an evolution in religious belief, in the science of medicine, and in the physical sciences, there must necessarily be a change evident in the growth of the principles, and in the applications of the law. So long as human perceptions are imperfect and human judgment fallible, just so long will conscientious judges differ in applying the law.

The same reasoning that sustains the suppression of dissenting opinions would necessarily apply in behalf of the proposition that a court should never reverse itself. There is but one step from this to the doctrine, once applied to kings, that the court can do no wrong: surely no one wants to see that day come.

C. B. G.